

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of: The ) **TRANSCRIPT OF**  
Application of Rocky Mountain ) **HEARING**  
Power for Approval of an )  
Electric Service Agreement ) Docket No.:  
between Rocky Mountain Power and ) 09-035-59  
Kennecott Utah Copper LLC )  
)  
In the Matter of: The )  
Application of Rocky Mountain ) Docket No.:  
Power for Approval of Power ) 09-035-62  
Purchase Agreement between )  
PacifiCorp d/b/a Rocky Mountain )  
Power and Kennecott Utah Copper )  
LLC )  
)  
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**Wednesday, November 4, 2009 - 9:30 a.m.**

Location: PUBLIC SERVICE COMMISSION  
160 East 300 South  
Fourth Floor, Room 451  
Salt Lake City, Utah

Before: Ruben H. Arredondo,  
Administrative Law Judge

A P P E A R A N C E S

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ALSO PRESENT:

Paul Clements  
Steve Sands  
Cheryl Murray  
Charles Peterson

I N D E X

| <u>Witness</u>              | <u>Page</u> |
|-----------------------------|-------------|
| <b>PAUL CLEMENTS</b>        |             |
| Examination by Mr. Ginsberg | 6           |
| Examination by Mr. Proctor  | 11          |
| Examination by Mr. Reeder   | 12          |
| <b>CHARLES E. PETERSON</b>  |             |
| Examination by Mr. Ginsberg | 15          |
| <b>CHERYL MURRAY</b>        |             |
| Examination by Mr. Reeder   | 18          |

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**Wednesday, November 4, 2009; 9:30 a.m.**

P R O C E E D I N G S

**JUDGE ARREDONDO:** We're on the record. We're here for two matters, actually. The first is Docket No. 09-035-59, In the Matter of the Application for Rocky Mountain Power for Approval of the Electric Service Agreement between Rocky Mountain Power and Kennecott; and Docket No. 09-035-62, In the Matter of the Application of Rocky Mountain Power for Approval of Power Purchase Agreement between PacifiCorp and Kennecott.

And with that, let's start with docket number ending in 59. We can take appearances, please, starting with Rocky Mountain Power.

**MR. SOLANDER:** Thank you. Daniel Solander on behalf of Rocky Mountain Power. I have with me Paul Clements of the Marketing and Origination Department for PacifiCorp with me.

**JUDGE ARREDONDO:** Okay, thank you.

**MR. REEDER:** Good morning. I'm Robert Reeder. And I have with me this morning from Kennecott Lynn Cardey-Yates, General Counsel, and Steve Sands, Director of Energy Programs.

**JUDGE ARREDONDO:** Thank you. And Mr. Ginsberg?

1           **MR. GINSBERG:** Michael Ginsberg. And with me  
2 today is Charles Peterson.

3           **JUDGE ARREDONDO:** Okay. And Mr. Proctor?

4           **MR. PROCTOR:** Paul Proctor, representing the  
5 Utah Office of Consumer Services. And Ms. Murray is  
6 here.

7           **JUDGE ARREDONDO:** All right, thank you. And  
8 with that, let's begin with the Company. Would you  
9 like to put on some testimony?

10          **MR. SOLANDER:** We were planning to just move  
11 the prefiled testimony of Paul Clements into the record  
12 at this time.

13          **JUDGE ARREDONDO:** All right. No objections?  
14 None. Okay, then we'll admit that prefiled testimony.

15          **MR. SOLANDER:** Thank you. And Mr. Clements  
16 is here to answer any questions that you might have  
17 regarding the contract. I know that Mr. Reeder also  
18 has the Kennecott folks here. If there are any points  
19 that you'd like us to address, Mr. Clements would be  
20 happy to do so, but otherwise we'd just stand on the  
21 pleadings at this time.

22          **JUDGE ARREDONDO:** Okay. Anybody else that  
23 would like to ask any questions of Mr. Clements?

24          **MR. GINSBERG:** I have a question or two.

25          **JUDGE ARREDONDO:** Okay, go ahead, Mr.

1 Ginsberg. Actually, let me swear you in real quick,  
2 Mr. Clements.

3 (Paul Clements is duly sworn.)

4 JUDGE ARREDONDO: Thank you. Go ahead.

5 PAUL CLEMENTS,

6 having been first duly sworn, was  
7 examined and testified as follows:

8 EXAMINATION

9 BY MR. GINSBERG:

10 Q. I have one or two questions, if you could.  
11 The proposed rate increase that is occurring for  
12 Kennecott is a little over three percent. Schedule 9,  
13 actually, though, increase occurred in the last rate  
14 case was 4.3 percent. Can you explain why there's a  
15 difference?

16 A. Certainly. In my -- first of all, I  
17 apologize to the Court and -- my voice is a little bit  
18 weak today, so if I need to repeat something, please  
19 ask and I'd be happy to repeat it.

20 In my prefiled testimony, in several areas  
21 you'll note -- and I'll turn to that, if you don't  
22 mind. Namely, page 4, lines 45 through 56, I outline  
23 some reasons for which the Company and Kennecott  
24 entered into a shorter term agreement when typically in  
25 the past we've had longer term agreements. And those

1 two primary issues are some uncertainty around fuel  
2 costs for Kennecott, and then also various other  
3 uncertainties around significant costs to their  
4 business, and so we've entered into a shorter term, or  
5 one-year agreement, for this particular agreement.

6 Now, in doing so, the parties agree that we  
7 would price the agreement as if we were extending the  
8 existing agreement one additional year. And the  
9 existing agreement, which ends at the end of this year,  
10 2009, has certain provisions in it under which the  
11 rates adjust. And in negotiating this new one-year  
12 agreement we used that same rate adjustment mechanism  
13 to set the rates for the 2010 agreement, and that's why  
14 the rates that are set in this contract for 2010 may  
15 not exactly match any increase that was given to the  
16 Schedule 9 customer class in 2009.

17 Q. Is that because the rate increase for  
18 Schedule 9 didn't go into effect at the beginning of  
19 the year?

20 A. Well, it's not necessarily that it didn't go  
21 into effect at the beginning of the year. If you look  
22 at -- in my direct testimony, on page 5, lines 74  
23 through 83, it explains the rate adjustment mechanism  
24 in the existing Kennecott contract, and it's that  
25 adjustment mechanism that was used to set the rates for

1 the 2010 agreement that's up before the Commission  
2 today.

3 Q. So if the same rate adjustment mechanism  
4 occurred in the next contract that occurred -- would  
5 continue in 2011, when would the make-up take place for  
6 the difference between Schedule 9 and the three percent  
7 that occurred in this case? Would it take place then?

8 A. Well, I don't feel it's appropriate at this  
9 time to comment on what the rate adjustment mechanism  
10 in the next contract would be, since neither party has  
11 been in negotiations regarding any contract beyond this  
12 2010 contract.

13 But any time you negotiate a contract with  
14 Kennecott or any other customer, we look at what the  
15 appropriate cost to service or rate should be for that  
16 customer, and through a negotiation process we make the  
17 determination of what those appropriate rates should  
18 be.

19 Q. You understand the Division has asked that  
20 the Commission require that the next contract reflect  
21 the rate adjustment to occur at or near the time rate  
22 adjustments occur for other Schedule 9 customers; is  
23 that right?

24 A. Yes, we're aware of the recommendation that  
25 the Division has made, and we intend to discuss that



1 with Kennecott during the next contract negotiation  
2 session for the 2011 and beyond contract.

3 Q. Is there any reason you didn't include the  
4 single item rate case in your list of items that would  
5 be adjusted potentially for like the carbon tax, DSM,  
6 or the ECAM proceeding?

7 A. No, there's no reason in particular. When we  
8 were negotiating the contract with Kennecott, we took  
9 into account some of the unique services around  
10 Kennecott in the operations. Kennecott is very large,  
11 one of the largest customers that is on Rocky Mountain  
12 Power's system, and they have some unique  
13 circumstances, namely, they have long-term fuel  
14 contracts that they often execute on an annual basis,  
15 and they have other contracts that they execute on an  
16 annual or semiannual basis, and so we take that into  
17 account when establishing Kennecott's rates.

18 And in the past, contracts have included some  
19 sort of a lag period where Kennecott's rates adjust  
20 annually similar to other industrial customers, large  
21 industrial special contract customers, and we deemed  
22 that that lag would be appropriate in this case for a  
23 one-year agreement, consistent with Commission findings  
24 in previous agreements which allowed for a similar lag  
25 period.

1           And it's important to note that the lag  
2 period could really cut both ways for Kennecott. In  
3 the event of a rate decrease, that rate decrease would  
4 be lagged as well. And so in exchange for some degree  
5 of a period of rate certainty, Kennecott is giving up  
6 an opportunity for a rate decrease and also avoiding a  
7 rate increase at the same time, whatever it may be.

8           **Q.** But my question went to the single item rate  
9 case provisions that you didn't include in your  
10 contract. Was there a reason? Did you intentionally  
11 exclude that?

12           **A.** No, we didn't intentionally exclude that. We  
13 were looking at -- you know, and we viewed a single  
14 item rate case in a similar fashion that we would a  
15 general rate case in establishing their rates.

16           **Q.** You also did not do a cost-of-service study  
17 on Kennecott either for this or for the general rate  
18 case, did you?

19           **A.** Well, Kennecott's rates are primarily based  
20 on Schedule 31 for the March through October period  
21 when their large coal unit is operating, and then on  
22 Schedule 9 for the other months when the unit is not  
23 operating.

24           As you'll note, the cost of service study  
25 that the company typically files in conjunction with

1 its rate cases does not include a cost of service for  
2 the Schedule 31 tariff class. The Schedule 31 rates  
3 are largely based on the Schedule 9 rates, and so there  
4 isn't an individual cost-of-service study done for a  
5 Schedule 31 customer.

6 **MR. GINSBERG:** I think that's all.

7 **JUDGE ARREDONDO:** Okay. Any follow-up  
8 questions you'd like to ask, Mr. Solander?

9 **MR. SOLANDER:** I have none, no.

10 **JUDGE ARREDONDO:** Okay. Mr. Proctor, do you  
11 have any questions?

12 **MR. PROCTOR:** Just one.

13 **EXAMINATION**

14 **BY MR. PROCTOR:**

15 **Q.** Mr. Clements, when is the last time that  
16 Rocky Mountain Power instituted a rate decrease?

17 **A.** I'm not equipped to answer that question in  
18 this proceeding.

19 **Q.** Well, are you equipped to answer the question  
20 in some other proceeding?

21 **A.** No. I'm just saying I -- I'll give you a  
22 better answer. I don't know off the top of my head.

23 **MR. PROCTOR:** No more questions.

24 **JUDGE ARREDONDO:** Mr. Reeder, any questions?

25 **MR. REEDER:** Just a couple.

**EXAMINATION**

**BY MR. REEDER:**

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2  
3           **Q.** Mr. Clements, referring to the contract and  
4 the rates that are attached to the contract, is it  
5 true, sir, that the resulting rates, when applying the  
6 formula from the last contract, resulted in some unit  
7 rates higher than Schedule 9 rates?

8           **A.** That's correct, and that's a very good point.  
9 Kennecott's rates -- and the rates are set forth in the  
10 agreement in Exhibit 1, which should be the last page  
11 of the agreement -- some components of the rate are  
12 slightly above the Schedule 9 or Schedule 31 rate, and  
13 some components of the rates are slightly below the  
14 Schedule 9 or Schedule 31 rate.

15                   And when we negotiated the Kennecott contract  
16 that is set to terminate at the end of this year, the  
17 parties structured the rate in such a way that  
18 Kennecott would have some incentive to operate their  
19 generation at a high level of efficiency during the  
20 summer months. And what you'll see is that the heavy  
21 load hour demand charge for the summer month is  
22 actually well above what the tariff rate is at the  
23 moment.

24                   And the division's memo provides some  
25 analysis around this very issue, and that if

1 Kennecott's generation were not to be -- were not  
2 operating during the summer, the revenues resulting  
3 from Kennecott based on the rates in Exhibit 1 of this  
4 contract would actually be higher than the revenues  
5 that would be received under the standard tariff rates.

6           And the Division's memo does a good job of  
7 explaining that. They really looked at two scenarios.  
8 One, if Kennecott's generation is operating, then the  
9 revenues would be slightly below what the applicable  
10 tariff rates would be. If Kennecott's generation is  
11 not operating, then their revenues would be slightly  
12 higher than what the revenues would be otherwise under  
13 the applicable tariff rates.

14           And that incentive was built in by design to  
15 continue to provide the appropriate price signals and  
16 incentives to Kennecott so that they operate their  
17 generation at a high level of efficiency during the  
18 summer months, that being March through October. So  
19 that's an excellent point, that some of the rates are  
20 higher than tariff, some are slightly below.

21           **Q.** Mr. Clements, there was some discussion on  
22 this record concerning a single item rate case. Has  
23 Rocky Mountain filed a single item rate case?

24           **A.** To my knowledge, no.

25           **Q.** If you were to file a single item rate case

1 say June of this year, when would those rates become  
2 effective, as you understand the statute?

3 **A.** I may defer to my counsel on that.

4 **MR. SOLANDER:** Ten months.

5 **A.** Ten months. I'm being told by counsel it  
6 would be ten months.

7 **Q.** Well after the expiration of this contract?

8 **A.** That's correct.

9 **Q.** So that the probability, unless an  
10 application is filed in the very near future, that  
11 there would even be a rate increase under a single item  
12 rate case is fairly remote, is it not?

13 **A.** That's correct.

14 **MR. REEDER:** Thank you. I have nothing  
15 further.

16 **JUDGE ARREDONDO:** Okay. Thank you.

17 **MR. GINSBERG:** Just to make it clear, the ten  
18 month, 240 days doesn't -- I would just like the  
19 statute to speak for itself on what the time periods  
20 are, because I think there are actually two time  
21 periods that can apply to single item rate cases.

22 **JUDGE ARREDONDO:** Okay.

23 **MR. PROCTOR:** And if I might, Judge, I think  
24 there was some reference to members from the Division  
25 that it's also possible in 150 days.

1                   **JUDGE ARREDONDO:** Okay. Do you want to ask  
2 some follow-up questions based on that information, Mr.  
3 Reeder?

4                   **MR. REEDER:** I don't know whether to ask Mr.  
5 Proctor or Mr. Ginsberg a question. I think the  
6 statute does have a 150-day suspense period. If you  
7 count 150 days from any day forward, I think you will  
8 observe that the probability of it occurring during the  
9 one-year contract is fairly remote.

10                   **JUDGE ARREDONDO:** Okay.

11                   **MR. REEDER:** So I will just argue the matter  
12 rather than interrogate either of them.

13                   **JUDGE ARREDONDO:** Okay. All right. Thank  
14 you.

15                   Mr. Ginsberg, would you like to have Mr.  
16 Peterson testify?

17                   **MR. GINSBERG:** Yes.

18                                   **CHARLES E. PETERSON,**  
19                   having been first duly sworn, was  
20                   examined and testified as follows:

21   **EXAMINATION**

22                   **BY MR. GINSBERG:**

23                                   **Q.** Now, we're just doing the 59 one at this  
24 point?

25                   **JUDGE ARREDONDO:** Right.

1 Q. Would you state your name for the record?

2 A. Charles E. Peterson.

3 Q. And your position with the Division?

4 A. I'm a Technical Analyst with the Division of  
5 Public Utilities.

6 Q. And you prepared the memorandum that's been  
7 filed with the Commission that was filed on October 15,  
8 2009?

9 A. Yes, I did.

10 MR. GINSBERG: And we also were not  
11 intending -- the memo speaks for itself, and we had no  
12 additional comments to make, and we thought it was  
13 unnecessary to provide a summary, unless you would  
14 think it would be helpful.

15 JUDGE ARREDONDO: No, that's fine, if you  
16 want to just rest on that recommendation.

17 MR. GINSBERG: Yes.

18 JUDGE ARREDONDO: Just take administrative  
19 notice of that.

20 Would you do -- Mr. Proctor, do you have any  
21 questions for Mr. Peterson?

22 MR. PROCTOR: No, thank you.

23 JUDGE ARREDONDO: Mr. Solander?

24 MR. SOLANDER: No questions.

25 JUDGE ARREDONDO: Or Mr. Reeder?



1           **MR. REEDER:** I'd just simply say, Mr.  
2 Peterson, thank you very much for recommending approval  
3 of the contract.

4           **JUDGE ARREDONDO:** Okay.

5           **MR. PETERSON:** Oh, you're welcome.

6           **JUDGE ARREDONDO:** Anything else from the  
7 Division?

8           **MR. GINSBERG:** No, sir.

9           **JUDGE ARREDONDO:** No. All right. Mr.  
10 Proctor, would you like to --

11           **MR. PROCTOR:** The Office would also ask that  
12 the Commission take notice of the memorandum that we  
13 filed that reflects the Office's position in this case.

14           **JUDGE ARREDONDO:** Okay.

15           **MR. PROCTOR:** And we would not intend to have  
16 any summary. If there are questions, of course, Ms.  
17 Murray will answer them.

18           **JUDGE ARREDONDO:** Okay. Does anybody have  
19 questions for Ms. Murray?

20           **MR. REEDER:** Just one, if I may.

21           **JUDGE ARREDONDO:** All right, go ahead. Let  
22 me actually swear you in, Ms. Murray.

23                   **(Cheryl Murray was duly sworn.)**

24           **JUDGE ARREDONDO:** Thank you.

25                                   **EXAMINATION**

1 **BY MR. REEDER:**

2 Q. Ms. Murray, I trust that you're familiar with  
3 the committee's memo in this matter?

4 A. I -- could you speak up just a bit? I think  
5 I heard you.

6 JUDGE ARREDONDO: Mr. Reeder, make sure your  
7 mic's on.

8 Q. I'll get the mic closer, if I might. I think  
9 it's on, so I think I'm broadcasting with the mic as  
10 close as I can be, but I'll also speak up.

11 Ms. Murray, are you familiar with the memo  
12 prepared and submitted by the Office under date of  
13 October 15th in this matter?

14 A. Yes, I am.

15 Q. Are you familiar with the position of the  
16 Office in this matter suggesting that the company has  
17 not provided a rationale for the lag?

18 A. Yes, I am.

19 Q. Have you been present in the hearing room  
20 this morning and heard the testimony of Mr. Clements  
21 concerning the rationale for the lag?

22 A. I have heard --

23 MR. REEDER: Thank you. I have nothing  
24 further.

25 A. -- his statement.

1           **MR. PROCTOR:** Well, excuse me, but I believe  
2 the witness was going to answer the question and then  
3 she was cut off by Mr. Reeder.

4           **Q.** Okay. You want to answer that, Ms. Murray?

5           **A.** I have heard his statement. I'm not sure  
6 that that provides what we would consider to be --  
7 consider to be rationale that situates Kennecott  
8 differently than other customers of Rocky Mountain  
9 Power.

10           There are businesses all over the place that  
11 do their budgets in advance, they do their planning in  
12 advance, and they would, I'm sure, also appreciate  
13 having a year lag, or a time of lag between when rate  
14 increases occur and when they are actually subject to  
15 them.

16           **Q.** Ms. Murray, can you identify for this record  
17 another customer who has electric-on-electric  
18 competition who enters into fuel contracts of more than  
19 a year?

20           **A.** No, I cannot.

21           **MR. REEDER:** Thank you. I have nothing  
22 further.

23           **JUDGE ARREDONDO:** Any follow-up questions,  
24 Mr. Proctor?

25           **MR. PROCTOR:** No, thank you.

1           **JUDGE ARREDONDO:** I do have a question for  
2 the Company on the Office's recommendations. Mr.  
3 Clements, did you read those, numbered 1 through 3, on  
4 page 3 of their recommendation?

5           **MR. CLEMENTS:** Yes, I did.

6           **JUDGE ARREDONDO:** And can you respond to  
7 those?

8           **MR. CLEMENTS:** I'd be happy to. The first  
9 being that the contract be automatically increased when  
10 general rate case -- general rates are increased. I  
11 think I'll address that and the second one at the same  
12 time. The second one is that the ESA be modified to  
13 include a provision specifying that Kennecott be  
14 subject to any costs attributed to major plan  
15 additions.

16           Those two particular recommendations would  
17 alter the terms and conditions of the agreement as  
18 agreed to between Kennecott and the Company, and that  
19 would alter the rates that were set forth in the  
20 agreement. This is a one-year contract, and the rates  
21 were set according to the method and the rate  
22 adjustment mechanism that I discussed earlier in my  
23 testimony today.

24           And the Company believes that adopting those  
25 two recommendations would significantly alter the

1 material terms and conditions of the agreement. And I  
2 believe if those two conditions were adopted by the  
3 Commission both parties, both being Kennecott and the  
4 Company, would likely want to go back and renegotiate  
5 the contract.

6 So the Company is unwilling to adopt the  
7 first two recommendations. And we believe the  
8 discussion today supports that those recommendations  
9 could be addressed or considered in future agreements,  
10 but this agreement we'd like to stand on its own.

11 Concerning the third recommendation, that  
12 similar language regarding ECAM, DSM costs, greenhouse  
13 gas costs, and major plant additions be included in  
14 future ESAs, the Company and Kennecott, if I may speak  
15 on their behalf for a moment, have already agreed that  
16 future agreements will address those issues in some  
17 manner, so we don't have any issue accepting the third  
18 condition, that we have some sort of language in future  
19 contracts addressing those issues.

20 However, we're unwilling to adopt  
21 recommendation one and two.

22 **JUDGE ARREDONDO:** Okay. Does anybody have  
23 any questions for Mr. Clements based on his testimony?  
24 No?

25 **MR. PROCTOR:** No.

1           **JUDGE ARREDONDO:** All right, then. Anything  
2 else anyone else would like to add? No? Okay.

3           Then let's move on to docket number ending in  
4 62, 09-035-62. And did you want to have Mr. Clements  
5 testify again, Mr. Solander?

6           **MR. SOLANDER:** We would just offer his  
7 prefiled testimony and make Mr. Clements available for  
8 any questions in the same manner.

9           **JUDGE ARREDONDO:** All right. Then we'll just  
10 take administrative notice of that, of his testimony.

11           Any questions for Mr. Clements?

12           **MR. GINSBERG:** Not on this one.

13           **JUDGE ARREDONDO:** No? Okay. All right. Did  
14 the Division want to put forth any additional --

15           **MR. GINSBERG:** Well, we did file a memorandum  
16 which was dated a few days later.

17           **MR. PETERSON:** The 27th.

18           **MR. GINSBERG:** The 27th of October, and that  
19 was also prepared by Mr. Peterson. And we would ask,  
20 you know, the Commission to include that in the record.  
21 And he's available for questions on that memorandum.

22           **JUDGE ARREDONDO:** Okay. We'll take notice of  
23 that. That was filed October 27th, I believe.

24           **MR. GINSBERG:** Yes.

25           **JUDGE ARREDONDO:** Any questions for Mr.

1 Peterson?

2 **MR. REEDER:** Nothing other than to thank him  
3 for his memorandum recommending approval of the  
4 contract.

5 **JUDGE ARREDONDO:** Okay. Mr. Proctor?

6 **MR. PROCTOR:** None.

7 **JUDGE ARREDONDO:** And would the Office like  
8 to present any additional testimony?

9 **MR. PROCTOR:** We have not filed anything, and  
10 we don't intend to. Thank you.

11 **JUDGE ARREDONDO:** Okay. And anything else?

12 **MR. SOLANDER:** I would just note I've been  
13 corrected. Mr. Clements did not file prefiled  
14 testimony in this docket, just in the other docket.

15 **JUDGE ARREDONDO:** Okay. So no objections,  
16 then, to the application?

17 **MR. GINSBERG:** No.

18 **JUDGE ARREDONDO:** No? Okay. All right then,  
19 we'll go ahead and -- I'll make a recommendation to the  
20 Commission and we'll go ahead and end. Thank you.

21 **MR. SOLANDER:** Thank you.

22 **(The hearing concluded at 9:51 a.m.)**

23 --oo0oo--

24

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**REPORTER'S HEARING CERTIFICATE**

State of Utah                    )  
  :  ss.  
County of Salt Lake        )

I, Angela L. Kirk, a Registered Professional Reporter and Certified Court Reporter in and for the State of Utah, do hereby certify:

That prior to being examined the witnesses were duly sworn to tell the truth, the whole truth, and nothing but the truth;

That said proceedings were taken down by me in stenotype on November 4, 2009, at the place herein named, and was thereafter transcribed, and that a true and correct transcription of said testimony is set forth in the preceding pages.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the event thereof.

WITNESS MY HAND at Salt Lake City, Utah  
this 11th day of November, 2009.

\_\_\_\_\_  
Angela L. Kirk, RPR, CCR